

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 800 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI RAMABHAI KOLI

Versus

KOLI MAVJIBHAI RAMABHAI THRO' LEGAL HEIRS

Appearance:

MR BH UPADHYAY for Petitioner

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. Shri Bhikhabhai Ramabhai Koli - Applicant has filed this Revision Application under section 115 of the Code of Civil Procedure challenging the order and judgment dated 20th April, 1999 in Regular Civil Suit No.100 of 1993 passed by the Civil Judge (J.D.), Gadhada.

2. The facts giving rise to this application are as under :-

2:1 Late Shri Ramabhai left behind him three sons Bhikhabhai Ramabhai - present applicant, late Bachubhai opponent no.2 and Mavjibhai - opponent no.1.

2:2 It was alleged in the present application that agricultural lands bearing Survey No.4 admeasuring 3 acre 15 guntha and Survey No.111 admeasuring 11 acre 15 guntha was alleged to be HUF property duly recorded in revenue account No.112. The present opponent nos.1 and 2 preferred Regular Civil Suit No.36 of 1976 in the Court of Civil Judge (J.D.), Gadhada for partition of the said properties. The Court was pleased to decree the said suit on 17th April, 1980.

2:3 Being aggrieved and dissatisfied with the judgment and order dated 17th April, 1980 and Appeal was filed before the District Court, Bhavnagar. The District Court, Bhavnagar by his judgment and order dated 3rd March, 1982 was please to dismiss the said Appeal.

2:4 Being aggrieved by the said judgment and order, the Second Appeal No.336 of 1982 was filed before this Court and the said Second appeal was also dismissed.

2:5 The present opponents as original plaintiffs in Regular Civil Suit No.36 of 1976 preferred Execution Petition bearing No.11 of 1982.

2:6 It was submitted that the lands in question were originally subjected to Barakhali Abolition Act and on abolition of Barakhali tenure, these lands were reallocated to the parties on new and impartible tenure. The nature of this tenure carried with it the previous sanction of competent authority namely the Collector. The land is as well as identified as Aveda land.

2:7 It was submitted that in view of the nature of tenure though decree for partition is passed and, therefore, for the said purpose, the present application preferred Special Civil Application No.23 of 1983 in the Court of Civil Judge (S.D.), Bhavnagar which is now subsequently, in view of the enhancement of pecuniary jurisdiction of the junior Court, the same is prepared as Regular Civil Suit No.100 of 1993 and transferred to the Civil Judge (J.D.), Gadhada and the same is pending and awaiting disposal according to law.

2:8 During the aforesaid proceedings, the Civil Court

in Execution Petition No.11 of 1982 directed the Collector, Bhavnagar under the provisions of Order-21 of the Code of Civil Procedure partitioned the property and handover the possession to the respective persons. It was submitted that the said process was objected on the grounds that the property in question of impartible new tenure and, therefore, cannot be partitioned and decree is not executable. The proposed division is hit by the provisions of Prevention of Fragmentation and Consolidation of Holdings Act. The revenue authority was please to partition the land on revenue records without actually partitioning the lands on the spot. Accordingly, in pending suit, applicant proposed to join Government as party vide application i.e. in Regular Civil Suit No.100 of 1993. The Court was pleased to dismiss the same.

2:9 Being aggrieved and dissatisfied the said order dated 20th April, 1999, the present Revision Application is filed.

3. Mr.B. H. Upadhyay, learned counsel for the petitioner states that now the Regular Civil Suit No.100 of 1993 has been disposed of on merits of the matter and the applicant - plaintiff has filed an Appeal against the said order and the said Appeal is also pending.

4. In view of the aforesaid circumstances, this Revision Application became infructuous and the same is disposed of accordingly. The learned counsel for the petitioner is at liberty to raise the said contentions before the appropriate Court in accordance with law.

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